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9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against,

13 **JOHN FRANCIS MCGUIRE, M.D.**
14 **225 E. 2nd Avenue**
15 **Escondido, California 92025-4212**

16 **Physician's and Surgeon's Certificate No.**
17 **A91145,**

18 Respondent.

Case No. 800-2015-016141

19 **DEFAULT DECISION**
20 **AND ORDER**

[Gov. Code, §11520]

21 **FINDINGS OF FACT**

22 1. On or about October 26, 2017, Complainant Kimberly Kirchmeyer, in her official
23 capacity as the Executive Director of the Medical Board of California (Board), Department of
24 Consumer Affairs, filed Accusation No. 8002015016141 against John Francis McGuire, M.D.
(Respondent) before the Medical Board of California.

25 2. On or about May 4, 2005, the Board issued Physician's and Surgeon's Certificate No.
26 A91145 to Respondent John Francis McGuire, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate expired on August 31, 2016, and has not been renewed. A true and correct

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1 copy of Respondent's certified license history is attached as Exhibit 1 to the accompanying
2 Default Decision Evidence Packet.¹

3 3. On or about September 21, 2015, Judge Mark A. Mandio of the Riverside Superior
4 Court, after considering Petitioner's Penal Code section 23 appearance and recommendation on
5 behalf of the Board, issued an order that, as a condition of any bail, own recognizance release, or
6 probation in the matter of *The People of the State of California v. John Francis McGuire*,
7 Superior Court Case No. SWF1501417, Respondent be prohibited from engaging in the practice
8 of medicine in the State of California pending the final resolution of the criminal proceedings
9 and/or pending the completion of any term of probation imposed by the court following the final
10 resolution of the criminal proceedings in Case No. SWF1501417. (Exhibit 2, Penal Code section
11 23 order.)

12 4. On or about October 26, 2017, Richard M. Acosta, an employee of the Complainant
13 Agency, served by Certified and First Class Mail a copy of the Accusation No. 8002015016141,
14 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
15 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
16 was and is 225 E. 2nd Avenue, Escondido, CA 92025-4212. A true and correct copy of the
17 Accusation, the related documents, and Declaration of Service are attached, and are incorporated
18 herein by reference. (Exhibit 3, Accusation, the related documents, and Declaration of Service.)

19 5. On or about November 13, 2017, the Board received a signed U.S. Postal Service
20 return receipt card indicating the aforementioned documents had been delivered on November 9,
21 2017. A true and correct copy of the signed return receipt is attached. (Exhibit B, and is
22 incorporated herein by reference.

23 6. Service of the Accusation was effective as a matter of law under the provisions of
24 Government Code section 11505, subdivision (c).

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27 ¹ All exhibits are true and correct copies of the originals, and are attached to the
28 accompanying Default Decision Evidence Packet. The Default Decision Evidence Packet is
hereby incorporated by reference, in its entirety, as if fully set forth herein.

1 7. Business and Professions Code section 118 states, in pertinent part:

2 “(b) The suspension, expiration, or forfeiture by operation of law of a license
3 issued by a board in the department, or its suspension, forfeiture, or cancellation by
4 order of the board or by order of a court of law, or its surrender without the written
5 consent of the board, shall not, during any period in which it may be renewed,
6 restored, reissued, or reinstated, deprive the board of its authority to institute or
7 continue a disciplinary proceeding against the licensee upon any ground provided by
8 law or to enter an order suspending or revoking the license or otherwise taking
9 disciplinary action against the license on any such ground.”

10 8. Government Code section 11506 states, in pertinent part:

11 “...

12 “(c) The respondent shall be entitled to a hearing on the merits if the
13 respondent files a notice of defense, and the notice shall be deemed a specific denial
14 of all parts of the accusation not expressly admitted. Failure to file a notice of
15 defense shall constitute a waiver of respondent’s right to a hearing, but the agency in
16 its discretion may nevertheless grant a hearing.”

17 9. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of Accusation No. 8002015016141, and therefore waived his right to a hearing on the merits of
19 Accusation No. 8002015016141. (Exhibit 5, Declaration of Deputy Attorney General Joseph F.
20 McKenna III.)

21 10. California Government Code section 11520 states, in pertinent part:

22 “(a) If the respondent either fails to file a notice of defense, or as applicable,
23 notice of participation, or to appear at the hearing, the agency may take action based
24 upon the respondent’s express admissions or upon other evidence and affidavits may
25 be used as evidence without any notice to respondent.

26 “...”

27 11. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on

Respondent's express admissions by way of default and the evidence before it, contained in Exhibits 1 through 8, in the separate accompanying "Default Decision Evidence Packet," finds that the charges and allegations in Accusation No. 8002015016141, and each of them, separately and severally, are true and correct.

JURISDICTION

12. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

13. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

14. Section 2232² of the Code states, in pertinent part:

"(a) Except as provided in subdivisions (b), (c), and (d), the board shall promptly revoke the license of any person who, at any time after January 1, 1947, has been required to register as a sex offender pursuant to the provisions of Section 290 of the Penal Code.

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² Section 2232 of the Code was amended on January 1, 2018. The operative statute applicable is the prior version. The text is cited for reference purposes only. Section 2232 of the Code provides:

(a) Except as provided in subdivisions (c), (d), and (e), the board shall automatically revoke the license of any person who, at any time after January 1, 1947, has been required to register as a sex offender pursuant to the provisions of Section 290 of the Penal Code, regardless of whether the related conviction has been appealed. The board shall notify the licensee of the license revocation and of his or her right to elect to have a hearing as provided in subdivision (b).

"..."

1 15. Section 2234 of the Code states, in pertinent part:

2 “The board shall take action against any licensee who is charged with
3 unprofessional conduct. In addition to other provisions of this article,
4 unprofessional conduct includes, but is not limited to, the following:

5 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
6 abetting the violation of, or conspiring to violate any provision of this chapter.

7 “...”

8 16. Unprofessional conduct under Business and Professions Code section 2234 is
9 conduct which breaches the rules or ethical code of the medical profession, or conduct which is
10 unbecoming to a member in good standing of the medical profession, and which demonstrates an
11 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
12 575.)

13 17. Section 726 of the Code states, in pertinent part:

14 “(a) The commission of any act of sexual abuse, misconduct, or relations with
15 a patient, client, or customer constitutes unprofessional conduct and grounds for
16 disciplinary action for any person licensed under this division or under any
17 initiative act referred to in this division.

18 “...”

19 18. Section 729 of the Code states, in pertinent part:

20 “(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse
21 counselor or any person holding himself or herself out to be a physician and
22 surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an
23 act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient
24 or client, or with a former patient or client when the relationship was terminated
25 primarily for the purpose of engaging in those acts, unless the physician and
26 surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the
27 patient or client to an independent and objective physician and surgeon,
28 psychotherapist, or alcohol and drug abuse counselor recommended by a third-

1 party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor
2 for treatment, is guilty of sexual exploitation by a physician and surgeon,
3 psychotherapist, or alcohol and drug abuse counselor.

4 “(b) Sexual exploitation by a physician and surgeon, psychotherapist, or
5 alcohol and drug abuse counselor is a public offense:

6 “(1) An act in violation of subdivision (a) shall be punishable by
7 imprisonment in a county jail for a period of not more than six months, or a fine
8 not exceeding one thousand dollars (\$1,000), or by both that imprisonment and
9 fine.

10 “...

11 “(3) An act or acts in violation of subdivision (a) with two or more victims shall
12 be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the
13 Penal Code for a period of 16 months, two years, or three years, and a fine not
14 exceeding ten thousand dollars (\$10,000); or the act or acts shall be punishable by
15 imprisonment in a county jail for a period of not more than one year, or a fine not
16 exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

17 “...

18 “For purposes of subdivision (a), in no instance shall consent of the patient or
19 client be a defense. However, physicians and surgeons shall not be guilty of
20 sexual exploitation for touching any intimate part of a patient or client unless the
21 touching is outside the scope of medical examination and treatment, or the
22 touching is done for sexual gratification.

23 “(c) For purposes of this section:

24 “...

25 “(3) ‘Sexual contact’ means sexual intercourse or the touching of an intimate
26 part of a patient for the purpose of sexual arousal, gratification, or abuse.

27 “(4) ‘Intimate part’ and ‘touching’ have the same meanings as defined in
28 Section 243.4 of the Penal Code.

1 “(d) In the investigation and prosecution of a violation of this section, no
2 person shall seek to obtain disclosure of any confidential files of other patients,
3 clients, or former patients or clients of the physician and surgeon, psychotherapist,
4 or alcohol and drug abuse counselor.

5 “...”

6 19. Section 2236 of the Code states:

7 “(a) The conviction of any offense substantially related to the qualifications,
8 functions, or duties of a physician and surgeon constitutes unprofessional conduct
9 within the meaning of this chapter. The record of conviction shall be conclusive
10 evidence only of the fact that the conviction occurred.

11 “(b) The district attorney, city attorney, or other prosecuting agency shall
12 notify the Division of Medical Quality³ of the pendency of an action against a
13 licensee charging a felony or misdemeanor immediately upon obtaining
14 information that the defendant is a licensee. The notice shall identify the licensee
15 and describe the crimes charged and the facts alleged. The prosecuting agency
16 shall also notify the clerk of the court in which the action is pending that the
17 defendant is a licensee, and the clerk shall record prominently in the file that the
18 defendant holds a license as a physician and surgeon.

19 “(c) The clerk of the court in which a licensee is convicted of a crime shall,
20 within 48 hours after the conviction, transmit a certified copy of the record of
21 conviction to the board. The division may inquire into the circumstances
22 surrounding the commission of a crime in order to fix the degree of discipline or to
23 determine if the conviction is of an offense substantially related to the
24 qualifications, functions, or duties of a physician and surgeon.

25
26 ³ California Business and Professions Code section 2002, as amended and effective
27 January 1, 2008, provides that, unless otherwise expressly provided, the term “board” as used in
28 the State Medical Practice Act (Bus. & Prof. Code, §§ 2000, *et seq.*) means the “Medical Board
of California,” and references to the “Division of Medical Quality” and “Division of Licensing”
in the Act or any other provision of law shall be deemed to refer to the Board.

1 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere
2 is deemed to be a conviction within the meaning of this section and Section
3 2236.1. The record of conviction shall be conclusive evidence of the fact that the
4 conviction occurred.”

5 20. Section 2236.1 of the Code states:

6 “(a) A physician and surgeon’s certificate shall be suspended automatically
7 during any time that the holder of the certificate is incarcerated after conviction of
8 a felony, regardless of whether the conviction has been appealed. The Division of
9 Medical Quality shall, immediately upon receipt of the certified copy of the record
10 of conviction, determine whether the certificate of the physician and surgeon has
11 been automatically suspended by virtue of his or her incarceration, and if so, the
12 duration of that suspension. The division shall notify the physician and surgeon of
13 the license suspension and of his or her right to elect to have the issue of penalty
14 heard as provided in this section.

15 “(b) Upon receipt of the certified copy of the record of conviction, if after a
16 hearing it is determined therefrom that the felony of which the licensee was
17 convicted was substantially related to the qualifications, functions, or duties of a
18 physician and surgeon, the Division of Medical Quality shall suspend the license
19 until the time for appeal has elapsed, if no appeal has been taken, or until the
20 judgment of conviction has been affirmed on appeal or has otherwise become
21 final, and until further order of the division. The issue of substantial relationship
22 shall be heard by an administrative law judge from the Medical Quality Hearing
23 Panel sitting alone or with a panel of the division, in the discretion of the division.

24 “(c) Notwithstanding subdivision (b), a conviction of any crime referred to in
25 Section 2237, or a conviction of Section 187, 261, 262, or 288 of the Penal Code,
26 shall be conclusively presumed to be substantially related to the qualifications,
27 functions, or duties of a physician and surgeon and no hearing shall be held on this
28 issue. Upon its own motion or for good cause shown, the division may decline to

1 impose or may set aside the suspension when it appears to be in the interest of
2 justice to do so, with due regard to maintaining the integrity of and confidence in
3 the medical profession.

4 “(d)(1) Discipline may be ordered in accordance with Section 2227, or the
5 Division of Licensing may order the denial of the license when the time for appeal
6 has elapsed, the judgment of conviction has been affirmed on appeal, or an order
7 granting probation is made suspending the imposition of sentence, irrespective of a
8 subsequent order under Section 1203.4 of the Penal Code allowing the person to
9 withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the
10 verdict of guilty, or dismissing the accusation, complaint, information, or
11 indictment.

12 “(2) The issue of penalty shall be heard by an administrative law judge from
13 the Medical Quality Hearing Panel sitting alone or with a panel of the division, in
14 the discretion of the division. The hearing shall not be had until the judgment of
15 conviction has become final or, irrespective of a subsequent order under Section
16 1203.4 of the Penal Code, an order granting probation has been made suspending
17 the imposition of sentence; except that a licensee may, at his or her option, elect to
18 have the issue of penalty decided before those time periods have elapsed. Where
19 the licensee so elects, the issue of penalty shall be heard in the manner described in
20 this section at the hearing to determine whether the conviction was substantially
21 related to the qualifications, functions, or duties of a physician and surgeon. If the
22 conviction of a licensee who has made this election is overturned on appeal, any
23 discipline ordered pursuant to this section shall automatically cease. Nothing in
24 this subdivision shall prohibit the division from pursuing disciplinary action based
25 on any cause other than the overturned conviction.

26 “(e) The record of the proceedings resulting in the conviction, including a
27 transcript of the testimony therein, may be received in evidence.

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1 “(f) The other provisions of this article setting forth a procedure for the
2 suspension or revocation of a physician and surgeon’s certificate shall not apply to
3 proceedings conducted pursuant to this section.”

4 21. Section 2246 of the Code states:

5 “Any proposed decision or decision issued under this article that contains any
6 finding of fact that the licensee engaged in any act of sexual exploitation, as
7 described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729,
8 with a patient shall contain an order of revocation. The revocation shall not be
9 stayed by the administrative law judge.”

10 22. Section 243.4 of the Penal Code states, in pertinent part:

11 “...

12 “(c) Any person who touches an intimate part of another person for the
13 purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at
14 the time unconscious of the nature of the act because the perpetrator fraudulently
15 represented that the touching served a professional purpose, is guilty of sexual
16 battery. A violation of this subdivision is punishable by imprisonment in a county
17 jail for not more than one year, and by a fine not exceeding two thousand dollars
18 (\$2,000); or by imprisonment in the state prison for two, three, or four years, and
19 by a fine not exceeding ten thousand dollars (\$10,000).

20 “...

21 “(f) As used in subdivisions (a), (b), (c), and (d), ‘touches’ means physical
22 contact with the skin of another person whether accomplished directly or through
23 the clothing of the person committing the offense.

24 “(g) As used in this section, the following terms have the following meanings:

25 “(1) ‘Intimate part’ means the sexual organ, anus, groin, or buttocks of any
26 person, and the breast of a female.

27 “...

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1 “(4) ‘Medically incapacitated’ means a person who is incapacitated as a result
2 of prescribed sedatives, anesthesia, or other medication.

3 “(5) ‘Institutionalized’ means a person who is located voluntarily or involuntarily in
4 a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

5 “(h) This section shall not be construed to limit or prevent prosecution under
6 any other law which also proscribes a course of conduct that also is proscribed by
7 this section.

8 “...”

9 23. Section 290 of the Penal Code states:

10 “(a) Sections 290 to 290.024, inclusive, shall be known and may be cited as
11 the Sex Offender Registration Act. All references to ‘the Act’ in those sections are
12 to the Sex Offender Registration Act.

13 “(b) Every person described in subdivision (c), for the rest of his or her life
14 while residing in California, or while attending school or working in California, as
15 described in Sections 290.002 and 290.01, shall be required to register with the
16 chief of police of the city in which he or she is residing, or the sheriff of the county
17 if he or she is residing in an unincorporated area or city that has no police
18 department, and, additionally, with the chief of police of a campus of the
19 University of California, the California State University, or community college if
20 he or she is residing upon the campus or in any of its facilities, within five working
21 days of coming into, or changing his or her residence within, any city, county, or
22 city and county, or campus in which he or she temporarily resides, and shall be
23 required to register thereafter in accordance with the Act.

24 “(c) The following persons shall be required to register: Any person who,
25 since July 1, 1944, has been or is hereafter convicted in any court in this state or in
26 any federal or military court of a violation of Section 187 committed in the
27 perpetration, or an attempt to perpetrate, rape or any act punishable under Section
28 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate

1 Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit
2 mayhem, subdivision (b) and (c) of Section 236.1, **Section 243.4**, paragraph (1),
3 (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision
4 (a) of Section 262 involving the use of force or violence for which the person is
5 sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of
6 Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286,
7 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of
8 Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section
9 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any
10 offense involving lewd or lascivious conduct under Section 272, or any felony
11 violation of Section 288.2; any statutory predecessor that includes all elements of
12 one of the above-mentioned offenses; or any person who since that date has been
13 or is hereafter convicted of the attempt or conspiracy to commit any of the above-
14 mentioned offenses.” (Emphasis added.)

15 24. Section 290.5 of the Penal Code states, in pertinent part:

16 “(a)(1) A person required to register under Section 290 for an offense not
17 listed in paragraph (2), upon obtaining a certificate of rehabilitation under Chapter
18 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall be relieved of
19 any further duty to register under Section 290 if he or she is not in custody, on
20 parole, or on probation.

21 “(2) A person required to register under Section 290, upon obtaining a
22 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01)
23 of Title 6 of Part 3, shall **not** be relieved of the duty to register under Section 290,
24 or of the duty to register under Section 290 for any offense subject to that section
25 of which he or she is convicted in the future, if his or her conviction is for one of
26 the following offenses:

27 “...

28 “(C) Section 243.4, provided that the offense is a felony.

1 “...

2 “(U) The attempted commission of any of the offenses specified in this paragraph.

3 “...

4 “(b)(1) Except as provided in paragraphs (2) and (3), a person described in
5 paragraph (2) of subdivision (a) shall **not** be relieved of the duty to register until
6 that person has obtained a full pardon as provided in Chapter 1 (commencing with
7 Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

8 “...” (Emphasis added.)

9 25. Respondent has subjected his Physician’s and Surgeon’s Certificate No. A91145 to
10 disciplinary action under sections 2227, 2232, and 726, as defined by section 729, of the Code,
11 and section 243.4, of the Penal Code, in that he engaged in sexual abuse and/or sexual
12 exploitation of patients D.A., H.S., J.G., J.O., K.G., K.S., M.V., and T.M., (Exhibit 6, certified
13 copy of Information, Case No. SWF1501417, as more particularly alleged hereinafter:

14 26. **Patient D.A.**

15 (a) On or about April 30, 2015, Respondent, during the performance of his
16 duties as a physician and surgeon in a hospital and/or clinical setting, engaged in
17 sexual contact with patient D.A. and against her will, including, but not limited to,
18 touching an intimate part of patient D.A.’s body for the purpose of Respondent’s
19 sexual arousal, sexual gratification, or sexual abuse, while at the time patient D.A.
20 was unconscious of the nature of the sexual contact because Respondent had
21 fraudulently represented that the touching served a professional purpose.

22 27. **Patient H.S.**

23 (a) On or about January 28, 2015, Respondent, during the performance of his
24 duties as a physician and surgeon in a hospital and/or clinical setting, engaged in
25 sexual contact with patient H.S. and against her will, including, but not limited to,
26 touching an intimate part of patient H.S.’s body for the purpose of Respondent’s
27 sexual arousal, sexual gratification, or sexual abuse, while at the time patient H.S.

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1 was unconscious of the nature of the sexual contact because Respondent had
2 fraudulently represented that the touching served a professional purpose.

3 **28. Patient J.G.**

4 (a) In or around 2013, Respondent, during the performance of his duties as
5 a physician and surgeon in a hospital and/or clinical setting, engaged in sexual
6 contact with patient J.G. and against her will, including, but not limited to,
7 touching an intimate part of patient J.G.'s body for the purpose of Respondent's
8 sexual arousal, sexual gratification, or sexual abuse, while at the time patient J.G.
9 was unconscious of the nature of the sexual contact because Respondent had
10 fraudulently represented that the touching served a professional purpose.

11 (b) In or around April 2015, Respondent, during the performance of his
12 duties as a physician and surgeon in a hospital and/or clinical setting, engaged in
13 sexual contact with patient J.G. and against her will, including, but not limited to,
14 touching an intimate part of patient J.G.'s body for the purpose of Respondent's
15 sexual arousal, sexual gratification, or sexual abuse, while at the time patient J.G.
16 was unconscious of the nature of the sexual contact because Respondent had
17 fraudulently represented that the touching served a professional purpose.

18 **29. Patient J.O.**

19 (a) In or around March 2015, Respondent, during the performance of his
20 duties as a physician and surgeon in a hospital and/or clinical setting, engaged in
21 sexual contact with patient J.O. and against her will, including, but not limited to,
22 touching an intimate part of patient J.O.'s body for the purpose of Respondent's
23 sexual arousal, sexual gratification, or sexual abuse, while at the time patient J.O.
24 was unconscious of the nature of the sexual contact because Respondent had
25 fraudulently represented that the touching served a professional purpose.

26 **30. Patient K.G.**

27 (a) On or about June 24, 2014, Respondent, during the performance of his
28 duties as a physician and surgeon in a hospital and/or clinical setting, engaged in

sexual contact with patient K.G. and against her will, including, but not limited to, touching an intimate part of patient K.G.'s body for the purpose of Respondent's sexual arousal, sexual gratification, or sexual abuse, while at the time patient K.G. was unconscious of the nature of the sexual contact because Respondent had fraudulently represented that the touching served a professional purpose.

31. **Patient K.S.**

(a) In or around 2011, Respondent, during the performance of his duties as a physician and surgeon in a hospital and/or clinical setting, engaged in sexual contact with patient K.S. and against her will, including, but not limited to, touching an intimate part of patient K.S.'s body for the purpose of Respondent's sexual arousal, sexual gratification, or sexual abuse, while at the time patient K.S. was unconscious of the nature of the sexual contact because Respondent had fraudulently represented that the touching served a professional purpose.

32. **Patient M.V.**

(a) In or around March 2015, Respondent, during the performance of his duties as a physician and surgeon in a hospital and/or clinical setting, engaged in sexual contact with patient M.V. and against her will, including, but not limited to, touching an intimate part of patient M.V.'s body for the purpose of Respondent's sexual arousal, sexual gratification, or sexual abuse, while at the time patient M.V. was unconscious of the nature of the sexual contact because Respondent had fraudulently represented that the touching served a professional purpose.

33. **Patient T.M.**

(a) In or around 2014, Respondent, during the performance of his duties as a physician and surgeon in a hospital and/or clinical setting, engaged in sexual contact with patient T.M. and against her will, including, but not limited to, touching an intimate part of patient T.M.'s body for the purpose of Respondent's sexual arousal, sexual gratification, or sexual abuse, while at the time patient T.M.

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1 was unconscious of the nature of the sexual contact because Respondent had
2 fraudulently represented that the touching served a professional purpose.

3 (b) On or about April 29, 2015, Respondent, during the performance of his
4 duties as a physician and surgeon in a hospital and/or clinical setting, engaged in
5 sexual contact with patient T.M. and against her will.

6 34. Respondent has further subjected his Physician's and Surgeon's Certificate No.
7 A91145 to disciplinary action under sections 2227 and 2234, as defined by section 2236,
8 subdivision (a), of the Code, in that he has been convicted of a crime substantially related to the
9 qualifications, functions, or duties of a physician and surgeon, as more particularly alleged
10 hereinafter:

11 35. On or about August 4, 2016, the Riverside County District Attorney's Office filed an
12 Information against Respondent in the matter of *The People of the State of California v. John*
13 *Francis McGuire*, Superior Court Case No. SWF1501417 (Exhibit 6, Information, Case No.
14 SWF1501417). The Information charged Respondent with thirty-one (31) felonies including:

15 (a) Three counts of violating Penal Code section 261, subdivision (a), subsection (2),
16 [rape by force];

17 (b) Fourteen counts of violating Penal Code section 243.4, subdivision (c),
18 [sexual battery by fraudulent representation of professional purpose];

19 (c) Twelve counts of violating Business and Professions Code section 729,
20 subdivision (b), subsection (3), [sexual exploitation of a patient by physician and surgeon];

21 (d) One count of attempted violation of Penal Code section 664/243.4, subdivision (c);
22 and

23 (e) One count of attempted violation of Business and Professions Code section
24 664/729, subdivision (b), subsection (3).

25 36. On or about February 28, 2017, after an eleven (11) day jury trial, Respondent was
26 found guilty by the jury on twenty-six (26) counts of the Information including, ten (10) counts of
27 violating Penal Code section 243.4, subdivision (c), as felonies. (Exhibit 7, certified copy of
28 Minute Order dated February 28, 2017.)

37. On or about April 21, 2017, Respondent was sentenced by the court to state prison for a total term of fourteen (14) years and ten (10) months. The court also ordered that, upon his release from prison, Respondent must immediately register with local law enforcement pursuant to the requirements of Penal Code section 290. (Exhibit 8, certified copy of Minute Order dated April 21, 2017.)

38. Respondent has further subjected his Physician's and Surgeon's Certificate No. A91145 to disciplinary action under sections 2227 and 2234, as defined by section 2234, of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent John Francis McGuire, M.D., has subjected his Physician's and Surgeon's Certificate No. A 91145 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. Pursuant to its authority under California Government Code section 11520, and based on the evidence before it, the Board hereby finds that the charges and allegations contained in Accusation No. 8002015016141, and the Findings of Fact contained in paragraphs 1 through 38, above, and each of them, separately and severally are true and correct.

4. Pursuant to its authority under California Government Code section 11520, and by reason of the Findings of Fact contained in paragraphs 1 through 38, above, and Determination of Issues 1, 2, and 3, above, the Board hereby finds that Respondent John Francis McGuire, M.D., has subjected his Physician's and Surgeon's Certificate No. A 91145 to action in that:

(a) Respondent has engaged in sexual abuse and/or sexual exploitation of patients D.A., H.S., J.G., J.O., K.G., K.S., M.V., and T.M., in violation of Business and Professions Code sections 2227, 2232, and 726, as defined by section 729 of the Code and section 243.4 of the Penal Code;

1 (b) Respondent has been convicted of a crime substantially related to the
2 qualifications, functions, or duties of a physician and surgeon, in violation of
3 Business and Professions Code sections 2227, 2234, as defined by 2236, subdivision
4 (a) of the Code; and

5 (c) Respondent has engaged in conduct which breaches the rules or ethical
6 code of the medical profession, or conduct which is unbecoming a member in good
7 standing of the medical profession, and which demonstrates an unfitness to practice
8 medicine, as more particularly alleged in paragraphs 25, 26, 27, 28, 29, 30, 31, 32, 33,
9 34, 25, 26, 27, and 28, above, in violation of Business and Professions Code sections
10 2227 and 2234, as defined by section 2234 of the Code.

11 ORDER

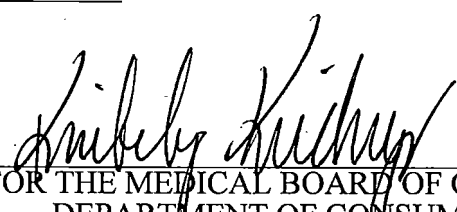
12 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. A91145, heretofore
13 issued to Respondent John Francis McGuire, M.D., is revoked.

14 If Respondent ever files an application for licensure in the State of California, the Board
15 shall treat it as a petition for reinstatement of a revoked license. Respondent must comply with
16 all laws, regulations and procedures for reinstatement of a revoked license at the time that the
17 application for relicensure or petition for reinstatement is filed.

18 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
19 written motion requesting that the Decision be vacated and stating the grounds relied on within
20 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
21 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

22 This Decision shall become effective on April 13, 2018, at 5:00 p.m.

23 It is so ORDERED March 15, 2018

24
25 
26 FOR THE MEDICAL BOARD OF CALIFORNIA
27 DEPARTMENT OF CONSUMER AFFAIRS
28 KIMBERLY KIRCHMEYER
EXECUTIVE DIRECTOR

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO OCT. 26 2017
BY [Signature] ANALYST

3. On or about September 21, 2015, Judge Mark A. Mandio of the Riverside Superior Court, after considering Petitioner's Penal Code section 23 appearance and recommendation on behalf of the Board, issued an order that, as a condition of any bail, own recognizance release, or probation in the matter of *The People of the State of California v. John Francis McGuire*, Superior Court Case No. SWF1501417, Respondent be prohibited from engaging in the practice of medicine in the State of California pending the final resolution of the criminal proceedings and/or pending the completion of any term of probation imposed by the court following the final resolution of the criminal proceedings in Case No. SWF1501417.

JURISDICTION

4. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2232 of the Code states, in pertinent part:

“(a) Except as provided in subdivisions (b), (c), and (d), the board shall promptly revoke the license of any person who, at any time after January 1, 1947, has been required to register as a sex offender pursuant to the provisions of Section 290 of the Penal Code.

“ ”
...

7. Section 2234 of the Code states, in pertinent part:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or

////

1 abetting the violation of, or conspiring to violate any provision of this chapter.

2 "..."

3 8. Unprofessional conduct under Business and Professions Code section 2234 is
4 conduct which breaches the rules or ethical code of the medical profession, or conduct which is
5 unbecoming to a member in good standing of the medical profession, and which demonstrates an
6 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
7 575.)

8 9. Section 726 of the Code states, in pertinent part:

9 "(a) The commission of any act of sexual abuse, misconduct, or relations with
10 a patient, client, or customer constitutes unprofessional conduct and grounds for
11 disciplinary action for any person licensed under this division or under any
12 initiative act referred to in this division.

13 "..."

14 10. Section 729 of the Code states, in pertinent part:

15 "(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse
16 counselor or any person holding himself or herself out to be a physician and
17 surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an
18 act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient
19 or client, or with a former patient or client when the relationship was terminated
20 primarily for the purpose of engaging in those acts, unless the physician and
21 surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the
22 patient or client to an independent and objective physician and surgeon,
23 psychotherapist, or alcohol and drug abuse counselor recommended by a third-
24 party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor
25 for treatment, is guilty of sexual exploitation by a physician and surgeon,
26 psychotherapist, or alcohol and drug abuse counselor.

27 "(b) Sexual exploitation by a physician and surgeon, psychotherapist, or
28 alcohol and drug abuse counselor is a public offense:

1 “(1) An act in violation of subdivision (a) shall be punishable by
2 imprisonment in a county jail for a period of not more than six months, or a fine
3 not exceeding one thousand dollars (\$1,000), or by both that imprisonment and
4 fine.

5 “...

6 “(3) An act or acts in violation of subdivision (a) with two or more victims shall
7 be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the
8 Penal Code for a period of 16 months, two years, or three years, and a fine not
9 exceeding ten thousand dollars (\$10,000); or the act or acts shall be punishable by
10 imprisonment in a county jail for a period of not more than one year, or a fine not
11 exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

12 “...

13 “For purposes of subdivision (a), in no instance shall consent of the patient or
14 client be a defense. However, physicians and surgeons shall not be guilty of
15 sexual exploitation for touching any intimate part of a patient or client unless the
16 touching is outside the scope of medical examination and treatment, or the
17 touching is done for sexual gratification.

18 “(c) For purposes of this section:

19 “...

20 “(3) ‘Sexual contact’ means sexual intercourse or the touching of an intimate
21 part of a patient for the purpose of sexual arousal, gratification, or abuse.

22 “(4) ‘Intimate part’ and ‘touching’ have the same meanings as defined in
23 Section 243.4 of the Penal Code.

24 “(d) In the investigation and prosecution of a violation of this section, no
25 person shall seek to obtain disclosure of any confidential files of other patients,
26 clients, or former patients or clients of the physician and surgeon, psychotherapist,
27 or alcohol and drug abuse counselor.

28 “...”

11. Section 2236 of the Code states:

“(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

“(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality¹ of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

“(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

“(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.”

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¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term “board” as used in the State Medical Practice Act (Bus. & Prof. Code, §§ 2000, *et seq.*) means the “Medical Board of California,” and references to the “Division of Medical Quality” and “Division of Licensing” in the Act or any other provision of law shall be deemed to refer to the Board.

1 12. Section 2236.1 of the Code states:

2 “(a) A physician and surgeon’s certificate shall be suspended automatically
3 during any time that the holder of the certificate is incarcerated after conviction of
4 a felony, regardless of whether the conviction has been appealed. The Division of
5 Medical Quality shall, immediately upon receipt of the certified copy of the record
6 of conviction, determine whether the certificate of the physician and surgeon has
7 been automatically suspended by virtue of his or her incarceration, and if so, the
8 duration of that suspension. The division shall notify the physician and surgeon of
9 the license suspension and of his or her right to elect to have the issue of penalty
10 heard as provided in this section.

11 “(b) Upon receipt of the certified copy of the record of conviction, if after a
12 hearing it is determined therefrom that the felony of which the licensee was
13 convicted was substantially related to the qualifications, functions, or duties of a
14 physician and surgeon, the Division of Medical Quality shall suspend the license
15 until the time for appeal has elapsed, if no appeal has been taken, or until the
16 judgment of conviction has been affirmed on appeal or has otherwise become
17 final, and until further order of the division. The issue of substantial relationship
18 shall be heard by an administrative law judge from the Medical Quality Hearing
19 Panel sitting alone or with a panel of the division, in the discretion of the division.

20 “(c) Notwithstanding subdivision (b), a conviction of any crime referred to in
21 Section 2237, or a conviction of Section 187, 261, 262, or 288 of the Penal Code,
22 shall be conclusively presumed to be substantially related to the qualifications,
23 functions, or duties of a physician and surgeon and no hearing shall be held on this
24 issue. Upon its own motion or for good cause shown, the division may decline to
25 impose or may set aside the suspension when it appears to be in the interest of
26 justice to do so, with due regard to maintaining the integrity of and confidence in
27 the medical profession.

28 ////

1 “(d)(1) Discipline may be ordered in accordance with Section 2227, or the
2 Division of Licensing may order the denial of the license when the time for appeal
3 has elapsed, the judgment of conviction has been affirmed on appeal, or an order
4 granting probation is made suspending the imposition of sentence, irrespective of a
5 subsequent order under Section 1203.4 of the Penal Code allowing the person to
6 withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the
7 verdict of guilty, or dismissing the accusation, complaint, information, or
8 indictment.

9 “(2) The issue of penalty shall be heard by an administrative law judge from
10 the Medical Quality Hearing Panel sitting alone or with a panel of the division, in
11 the discretion of the division. The hearing shall not be had until the judgment of
12 conviction has become final or, irrespective of a subsequent order under Section
13 1203.4 of the Penal Code, an order granting probation has been made suspending
14 the imposition of sentence; except that a licensee may, at his or her option, elect to
15 have the issue of penalty decided before those time periods have elapsed. Where
16 the licensee so elects, the issue of penalty shall be heard in the manner described
17 in this section at the hearing to determine whether the conviction was substantially
18 related to the qualifications, functions, or duties of a physician and surgeon. If the
19 conviction of a licensee who has made this election is overturned on appeal, any
20 discipline ordered pursuant to this section shall automatically cease. Nothing in
21 this subdivision shall prohibit the division from pursuing disciplinary action based
22 on any cause other than the overturned conviction.

23 “(e) The record of the proceedings resulting in the conviction, including a
24 transcript of the testimony therein, may be received in evidence.

25 “(f) The other provisions of this article setting forth a procedure for the
26 suspension or revocation of a physician and surgeon’s certificate shall not apply to
27 proceedings conducted pursuant to this section.”

28 /////

1 13. Section 2246 of the Code states:

2 “Any proposed decision or decision issued under this article that contains any
3 finding of fact that the licensee engaged in any act of sexual exploitation, as
4 described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729,
5 with a patient shall contain an order of revocation. The revocation shall not be
6 stayed by the administrative law judge.”

7 14. Section 243.4 of the Penal Code states, in pertinent part:

8 “...

9 “(c) Any person who touches an intimate part of another person for the
10 purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at
11 the time unconscious of the nature of the act because the perpetrator fraudulently
12 represented that the touching served a professional purpose, is guilty of sexual
13 battery. A violation of this subdivision is punishable by imprisonment in a county
14 jail for not more than one year, and by a fine not exceeding two thousand dollars
15 (\$2,000); or by imprisonment in the state prison for two, three, or four years, and
16 by a fine not exceeding ten thousand dollars (\$10,000).

17 “...

18 “(f) As used in subdivisions (a), (b), (c), and (d), ‘touches’ means physical
19 contact with the skin of another person whether accomplished directly or through
20 the clothing of the person committing the offense.

21 “(g) As used in this section, the following terms have the following meanings:

22 “(1) ‘Intimate part’ means the sexual organ, anus, groin, or buttocks of any
23 person, and the breast of a female.

24 “...

25 “(4) ‘Medically incapacitated’ means a person who is incapacitated as a result
26 of prescribed sedatives, anesthesia, or other medication.

27 “(5) ‘Institutionalized’ means a person who is located voluntarily or involuntarily in
28 a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

1 “(h) This section shall not be construed to limit or prevent prosecution under
2 any other law which also proscribes a course of conduct that also is proscribed by
3 this section.

4 “...”

5 15. Section 290 of the Penal Code states:

6 “(a) Sections 290 to 290.024, inclusive, shall be known and may be cited as
7 the Sex Offender Registration Act. All references to ‘the Act’ in those sections are
8 to the Sex Offender Registration Act.

9 “(b) Every person described in subdivision (c), for the rest of his or her life
10 while residing in California, or while attending school or working in California, as
11 described in Sections 290.002 and 290.01, shall be required to register with the
12 chief of police of the city in which he or she is residing, or the sheriff of the county
13 if he or she is residing in an unincorporated area or city that has no police
14 department, and, additionally, with the chief of police of a campus of the
15 University of California, the California State University, or community college if
16 he or she is residing upon the campus or in any of its facilities, within five working
17 days of coming into, or changing his or her residence within, any city, county, or
18 city and county, or campus in which he or she temporarily resides, and shall be
19 required to register thereafter in accordance with the Act.

20 “(c) The following persons shall be required to register: Any person who,
21 since July 1, 1944, has been or is hereafter convicted in any court in this state or in
22 any federal or military court of a violation of Section 187 committed in the
23 perpetration, or an attempt to perpetrate, rape or any act punishable under Section
24 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate
25 Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit
26 mayhem, subdivision (b) and (c) of Section 236.1, **Section 243.4**, paragraph (1),
27 (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision
28 (a) of Section 262 involving the use of force or violence for which the person is

1 sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of
2 Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286,
3 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of
4 Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section
5 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any
6 offense involving lewd or lascivious conduct under Section 272, or any felony
7 violation of Section 288.2; any statutory predecessor that includes all elements of
8 one of the above-mentioned offenses; or any person who since that date has been
9 or is hereafter convicted of the attempt or conspiracy to commit any of the above-
10 mentioned offenses.” (Emphasis added.)

11 16. Section 290.5 of the Penal Code states, in pertinent part:

12 “(a)(1) A person required to register under Section 290 for an offense not
13 listed in paragraph (2), upon obtaining a certificate of rehabilitation under Chapter
14 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall be relieved of
15 any further duty to register under Section 290 if he or she is not in custody, on
16 parole, or on probation.

17 “(2) A person required to register under Section 290, upon obtaining a
18 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01)
19 of Title 6 of Part 3, shall **not** be relieved of the duty to register under Section 290,
20 or of the duty to register under Section 290 for any offense subject to that section
21 of which he or she is convicted in the future, if his or her conviction is for one of
22 the following offenses:

23 “...

24 “(C) Section 243.4, provided that the offense is a felony.

25 “...

26 “(U) The attempted commission of any of the offenses specified in this paragraph.

27 “...

28 ////

“(b)(1) Except as provided in paragraphs (2) and (3), a person described in paragraph (2) of subdivision (a) shall not be relieved of the duty to register until that person has obtained a full pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

“...” (Emphasis added.)

FIRST CAUSE FOR DISCIPLINE

(Sexual Abuse and/or Sexual Exploitation of Patients)

17. Respondent has subjected his Physician's and Surgeon's Certificate No. A91145 to disciplinary action under sections 2227, 2232, and 726, as defined by section 729, of the Code, and section 243.4, of the Penal Code, in that he engaged in sexual abuse and/or sexual exploitation of patients D.A., H.S., J.G., J.O., K.G., K.S., M.V., and T.M., as more particularly alleged hereinafter:

18. Patient D.A.

(a) On or about April 30, 2015, Respondent, during the performance of his duties as a physician and surgeon in a hospital and/or clinical setting, engaged in sexual contact with patient D.A. and against her will, including, but not limited to, touching an intimate part of patient D.A.'s body for the purpose of Respondent's sexual arousal, sexual gratification, or sexual abuse, while at the time patient D.A. was unconscious of the nature of the sexual contact because Respondent had fraudulently represented that the touching served a professional purpose.

19. Patient H.S.

(a) On or about January 28, 2015, Respondent, during the performance of his duties as a physician and surgeon in a hospital and/or clinical setting, engaged in sexual contact with patient H.S. and against her will, including, but not limited to, touching an intimate part of patient H.S.'s body for the purpose of Respondent's sexual arousal, sexual gratification, or sexual abuse, while at the time patient H.S. was unconscious of the nature of the sexual contact because Respondent had fraudulently represented that the touching served a professional purpose.

1 20. **Patient J.G.**

2 (a) In or around 2013, Respondent, during the performance of his duties as
3 a physician and surgeon in a hospital and/or clinical setting, engaged in sexual
4 contact with patient J.G. and against her will, including, but not limited to,
5 touching an intimate part of patient J.G.'s body for the purpose of Respondent's
6 sexual arousal, sexual gratification, or sexual abuse, while at the time patient J.G.
7 was unconscious of the nature of the sexual contact because Respondent had
8 fraudulently represented that the touching served a professional purpose.

9 (b) In or around April 2015, Respondent, during the performance of his
10 duties as a physician and surgeon in a hospital and/or clinical setting, engaged in
11 sexual contact with patient J.G. and against her will, including, but not limited to,
12 touching an intimate part of patient J.G.'s body for the purpose of Respondent's
13 sexual arousal, sexual gratification, or sexual abuse, while at the time patient J.G.
14 was unconscious of the nature of the sexual contact because Respondent had
15 fraudulently represented that the touching served a professional purpose.

16 21. **Patient J.O.**

17 (a) In or around March 2015, Respondent, during the performance of his
18 duties as a physician and surgeon in a hospital and/or clinical setting, engaged in
19 sexual contact with patient J.O. and against her will, including, but not limited to,
20 touching an intimate part of patient J.O.'s body for the purpose of Respondent's
21 sexual arousal, sexual gratification, or sexual abuse, while at the time patient J.O.
22 was unconscious of the nature of the sexual contact because Respondent had
23 fraudulently represented that the touching served a professional purpose.

24 22. **Patient K.G.**

25 (a) On or about June 24, 2014, Respondent, during the performance of his
26 duties as a physician and surgeon in a hospital and/or clinical setting, engaged in
27 sexual contact with patient K.G. and against her will, including, but not limited to,
28 touching an intimate part of patient K.G.'s body for the purpose of Respondent's

1 sexual arousal, sexual gratification, or sexual abuse, while at the time patient K.G.
2 was unconscious of the nature of the sexual contact because Respondent had
3 fraudulently represented that the touching served a professional purpose.

4 23. **Patient K.S.**

5 (a) In or around 2011, Respondent, during the performance of his duties as
6 a physician and surgeon in a hospital and/or clinical setting, engaged in sexual
7 contact with patient K.S. and against her will, including, but not limited to,
8 touching an intimate part of patient K.S.'s body for the purpose of Respondent's
9 sexual arousal, sexual gratification, or sexual abuse, while at the time patient K.S.
10 was unconscious of the nature of the sexual contact because Respondent had
11 fraudulently represented that the touching served a professional purpose.

12 24. **Patient M.V.**

13 (a) In or around March 2015, Respondent, during the performance of his
14 duties as a physician and surgeon in a hospital and/or clinical setting, engaged in
15 sexual contact with patient M.V. and against her will, including, but not limited to,
16 touching an intimate part of patient M.V.'s body for the purpose of Respondent's
17 sexual arousal, sexual gratification, or sexual abuse, while at the time patient M.V.
18 was unconscious of the nature of the sexual contact because Respondent had
19 fraudulently represented that the touching served a professional purpose.

20 25. **Patient T.M.**

21 (a) In or around 2014, Respondent, during the performance of his duties as
22 a physician and surgeon in a hospital and/or clinical setting, engaged in sexual
23 contact with patient T.M. and against her will, including, but not limited to,
24 touching an intimate part of patient T.M.'s body for the purpose of Respondent's
25 sexual arousal, sexual gratification, or sexual abuse, while at the time patient T.M.
26 was unconscious of the nature of the sexual contact because Respondent had
27 fraudulently represented that the touching served a professional purpose.

28 ////

1 (b) On or about April 29, 2015, Respondent, during the performance of his
2 duties as a physician and surgeon in a hospital and/or clinical setting, engaged in
3 sexual contact with patient T.M. and against her will.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Conviction of a Crime Substantially Related to the Qualifications,
6 Functions, or Duties of a Physician and Surgeon)**

7 26. Respondent has subjected his Physician's and Surgeon's Certificate No. A91145 to
8 disciplinary action under sections 2227 and 2234, as defined by section 2236, subdivision (a), of
9 the Code, in that he has been convicted of a crime substantially related to the qualifications,
10 functions, or duties of a physician and surgeon, as more particularly alleged hereinafter:

11 27. On or about August 4, 2016, the Riverside County District Attorney's Office filed an
12 Information against Respondent in the matter of *The People of the State of California v. John*
13 *Francis McGuire*, Superior Court Case No. SWF1501417. The Information charged Respondent
14 with thirty-one (31) felonies including:

15 (a) Three counts of violating Penal Code section 261, subdivision (a), subsection (2),
16 [rape by force];

17 (b) Fourteen counts of violating Penal Code section 243.4, subdivision (c),
18 [sexual battery by fraudulent representation of professional purpose];

19 (c) Twelve counts of violating Business and Professions Code section 729,
20 subdivision (b), subsection (3), [sexual exploitation of a patient by physician and surgeon];

21 (d) One count of attempted violation of Penal Code section 664/243.4, subdivision (c);
22 and

23 (e) One count of attempted violation of Business and Professions Code section
24 664/729, subdivision (b), subsection (3).

25 28. On or about February 28, 2017, after an eleven (11) day jury trial, Respondent was
26 found guilty by the jury on twenty-six (26) counts of the Information including, ten (10) counts of
27 violating Penal Code section 243.4, subdivision (c), as felonies.

28 ////

1 29. On or about April 21, 2017, Respondent was sentenced by the court to state prison for
2 a total term of fourteen (14) years and ten (10) months. The court also ordered that, upon his
3 release from prison, Respondent must immediately register with local law enforcement pursuant
4 to the requirements of Penal Code section 290.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(General Unprofessional Conduct)**

7 30. Respondent has further subjected his Physician's and Surgeon's Certificate No.
8 A91145 to disciplinary action under sections 2227 and 2234, as defined by section 2234, of the
9 Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical
10 profession, or conduct which is unbecoming a member in good standing of the medical
11 profession, and which demonstrates an unfitness to practice medicine, as more particularly
12 alleged in paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, above, which are
13 hereby incorporated by reference and realleged as if fully set forth herein.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Medical Board of California issue a decision:

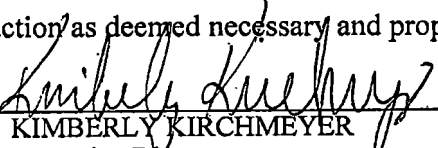
17 1. Revoking or suspending Physician's and Surgeon's Certificate No. A91145, issued to
18 Respondent John Francis McGuire, M.D.;

19 2. Revoking, suspending or denying approval of Respondent John Francis McGuire,
20 M.D.'s, authority to supervise physician assistants pursuant to section 3527 of the Code, and
21 advanced practice nurses;

22 3. Ordering Respondent John Francis McGuire, M.D., to pay the Medical Board the
23 costs of probation monitoring, if placed on probation; and

24 4. Taking such other and further action as deemed necessary and proper.

25 DATED: October 26, 2017

26 
27 KIMBERLY KIRCHMEYER
28 Executive Director
 Medical Board of California
 Department of Consumer Affairs
 State of California.
 Complainant